

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF PUERTO RICO

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 v.

6 CRUZ ROBERTO RAMOS-GONZÁLEZ,

7 Defendant.

Criminal No. 07-262 (JAF)

8
9 **MEMORANDUM ORDER**

10 A little over three years ago, a jury convicted Cruz Roberto Ramos-González of a variety of
11 drug-related offenses. Ramos-González was sentenced to 327 months. After his case was
12 remanded on appeal because of a Confrontation Clause violation, Ramos-González filed a motion to
13 dismiss his indictment, alleging prosecutorial misconduct and malicious prosecution in violation of
14 his rights under the Fifth Amendment. Many of Ramos-González' claims are intertwined with an
15 unrelated criminal case tried before Judge Pérez-Giménez. This Memorandum Opinion and Order
16 addresses Ramos-González' claims and finds he has failed to allege error sufficient to warrant a
17 wholesale dismissal of his indictment.

18 **Facts**

19 Ramos-González' initial trial before this court lasted from September 21 to September 25,
20 2009. He was convicted of violating Title 21, U.S.C. §§ 841(a)(1) and (b)(1)(B)(ii). Ramos-
21 González appealed his conviction. While awaiting his appeal, Ramos-González was tried before
22 Judge Pérez-Gimenez for having led a multi-city drug trafficking organization operating out of a
23 public housing facility in Yabucoa, Puerto Rico. Several witnesses testified against Ramos-
24 González, including three cooperating defendants. After a three-week trial, Ramos-González was
25 convicted.

1 As the government prepared for a third trial against Ramos-González—this time for charges
2 of witness tampering and obstruction of justice—the government discovered a photocopy of a letter
3 that had been written by Harry Smith Delgado-Cañuelas, one of the three cooperating defendants
4 who had testified against Ramos-González. The government produced the letter to all forty-seven
5 defendants, regardless of whether they had pled guilty or had gone to trial. Additionally, the
6 prosecuting attorney who had handled both of the matters before this court and Judge Pérez-
7 Gimenez ordered investigating agents to search through known evidence to locate the original letter
8 and any other material that might be related to Delgado-Cañuelas. During this search, investigating
9 agents found two additional notes that had not been previously produced by the government. These
10 December 2008 notes were written by Delgado-Cañuelas during toilet conversations between him
11 and one of the other cooperating defendants who testified against Ramos-González. These notes
12 were produced by the government. Ramos-González then moved for a new trial. The government
13 requested an evidentiary hearing. The prosecuting attorney testified at the evidentiary hearing. On
14 October 8, 2010, and May 31, 2011, Judge Pérez-Gimenez denied Ramos-González' motions for a
15 new trial, to dismiss the indictment, and to disqualify the prosecuting attorney from the case.

16 In January of 2012, the First Circuit remanded the present case because of a confrontation
17 clause violation. The government remedied the violation and trial was rescheduled for January 30,
18 2012. The trial was finally scheduled for Monday, January 30, 2012.

19 On Friday, January 27, 2012, the United States produced 302 FBI reports to defendant of
20 investigation interviews conducted with both Officers Javier Reyes and Wanda Vélez. The reports
21 of Javier Reyes' investigation were consistent with his trial testimony, but the reports of Wanda
22 Vélez contained facts that conflicted with her trial testimony from defendant's first trial in
23 September 2009. Ramos-González moved to have Vélez excluded as a witness; the court held the
24 motion to decide later, but the Government acquiesced and simply did not call Vélez to testify.

1 After hearing all the evidence, including the testimony of defense witnesses, the jury again
2 found Ramos-González guilty. On April 9, 2012, Ramos-González was sentenced to twenty-seven
3 years in prison once again. Shortly thereafter, Ramos-González moved to dismiss the indictment
4 for prosecutorial misconduct and defendant, *pro se*, supplemented the motion.

5 Analysis

6 Ramos-González moves for the dismissal of the indictment in this case, claiming
7 prosecutorial misconduct in intentionally concealing material evidence.¹ (Docket No. 232 at
8 5.) The government responds that all of Ramos-González' allegations of misconduct are
9 meritless. (Docket No. 248.) We agree with the government.

10 In Brady v. Maryland, the Supreme Court held that “the suppression by the prosecution of
11 evidence favorable to an accused upon request violates due process where the evidence is material
12 either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution.” 373
13 U.S. at 87. The duty to disclose such evidence is applicable even though there has been no request
14 by the accused. United States v. Agurs, 427 U.S. 97, 107 (1976). The duty to disclose encompasses
15 impeachment evidence, as well as exculpatory evidence. United States v. Bagley, 473 U.S. 667,
16 676 (1985). Such evidence is material “if there is a reasonable probability that, had the evidence
17 been disclosed to the defense, the result of the proceeding would have been different.” Id., at
18 682; see also Kyles v. Whitley, 514 U.S. 419, 433-434 (1995). In order to comply with Brady,
19 therefore, “the individual prosecutor has a duty to learn of any favorable evidence known to the
20 others acting on the government's behalf in this case, including the police.” Kyles, 514 U.S. at 437.

21 Any error is harmless if the government shows it is “highly probable that the error did not
22 influence the verdict.” United States v. Flores-de-Jesus, 569 F.3d 8, 27 (1st Cir. 2009). The
23 purposeful concealment of impeachable evidence can warrant a new trial “where the evidence is

¹ In note 2, (Docket No. 232 at 2), defense counsel charges the court with prejudging issues decided here, in this order and opinion. No such incident occurred. (S.H. Tran. at 55-62, Docket No. 245.)

1 highly impeaching or when the witness' testimony is uncorroborated and essential to the
2 conviction.” United States v. Martinez-Medina, 279 F.3d 105, 126 (1st Cir. 2002). See also United
3 States v. Conley, 415 F.3d 183, (1st Cir. 2005) (new trial granted when government withheld FBI
4 memorandum indicating that key witness had expressed uncertainty about his recollection of
5 underlying incident). But the jurisprudence of this circuit clearly holds that the “basic rule is that,
6 because of the constitutionality mandated independence of the grand jury and the prosecutor, courts
7 should be reluctant to dismiss an indictment.” United States v. Giorgi, 840 F.2d 1022, 1031 (1st Cir.
8 1988). The dismissal of an indictment then “will be ordered only for serious and blatant
9 prosecutorial misconduct that distorts the judicial process.” Id. Moreover, “dismissing...an
10 indictment after a defendant has been convicted of an offense is employed in only truly extreme
11 cases of egregious prosecutorial misconduct.” Pocardo v. United States, 784 F.2d 38, 44 (1st Cir.
12 1986). The central inquiry, then, is “whether any prosecutorial misconduct ‘so poisoned the well’
13 that it likely affected the outcome of the trial.” United States v. Dancy, 640 F.3d 455, 463 (1st Cir.
14 2011).

15 Here, we adopt the concise understanding of our brother court when it encountered a similar
16 set of allegations made by Ramos-González: The government neither committed a Brady violation
17 nor engaged in prosecutorial misconduct when it produced materials to the defense post-trial. See
18 United States v. Ramos-González, 2010 WL 4181674 (D.P.R. 2010); United States v. Ramos-
19 González, 2011 WL 2144215 (D.P.R. 2011). The letter and notes amounted to “collateral
20 impeachment evidence” that, at best, discredited the witness and his motivation for testifying. But,
21 the letter and notes produced by the government at post-conviction did not, in any way, provide
22 exculpatory evidence of the guilt of Ramos-González. Furthermore, the substance of these
23 materials—whether Delgado-Cañuelas lied about having talked about the case in prison—was
24 subject to extensive cross-examination at trial.

Ramos-González further contends that the government knowingly allowed Officer Vélez to perjure herself during trial after she testified regarding an identification that she previously indicated to federal investigators that she did not make. But, in the trial that followed the remand from the First Circuit, the government conceded Ramos-González' motion to preclude the testimony of Officer Vélez. In the new trial held before this court Officer Vélez did not testify and, therefore, any error her conflicting testimony may have originally introduced was cured in this subsequent and new trial. Therefore, on this count as well Ramos-González suffered no prejudice.

Conclusion

For the foregoing reasons, Defendant's motion is hereby **DENIED**.

IT IS SO ORDERED.

San Juan, Puerto Rico, this 1st day of February, 2013.

s/José Antonio Fusté
JOSE ANTONIO FUSTE
United States District Judge